

AVONDALE PRIME PRODUCTS

5-2110-07  
07-27-10-048

ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents is made by Lalit Kumar V. Parekh and Roshni L. Parekh, his wife (hereinafter "Assignor"), whose address is 133 Oliver Court, Schaumburg, Illinois 60193, in favor of Avondale Federal Savings Bank (hereinafter "Assignee"), whose address is 20 North Clark Street, Chicago, Illinois 60602.

WITNESSETH

For value received, Assignor does hereby assign to Assignee:

1. The "Identified Leases", if any, as shown in Schedule 1 hereof, any and all existing and future leases, including subleases thereof, and any and all extensions, renewals, and replacements thereof, upon all or any part of the premises described more particularly in Exhibit "A" (hereinafter the "Premises") All the leases, subleases, and tenancies are hereinafter referred to as the "Leases"; and

2. Any and all guarantees of tenants' performance under the Leases; and

3. The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits (hereinafter the "rents"), now due or which may become due or to which Assignor may now or shall hereafter become entitled or which he may demand or claim, including those rents coming due during any redemption period, arising or issuing from or out of the Leases or from or out of the Premises or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents, and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, together with any and all debts and claims of any kind that Assignor may have against any tenant under the Leases or any subtenants or occupants of the Premises, excepting therefrom any sums which by the express provisions of any of the Leases are payable directly to any governmental authority or to any other person, firm, or corporation other than the landlord under the Lease; and

4. Any and all security deposits relating to the Premises or the Leases.

To have and to hold the same to the Assignee, its successors and assigns, until termination of the Assignment as hereinafter provided.

Subject, however, to a license hereby granted by Assignee to Assignor to collect and receive all of the rents; Provided, however, that this license is limited as hereinafter provided:

For the purpose of securing the payment of the indebtedness evidenced by a certain Promissory Note made by Assignor, payable to the order of Assignee in the amount of One Hundred Fifty-Nine Thousand and No/100-- dollars (\$ 159,000.00 ), dated ~~November 10, 1980~~ and presently held by Assignee, including any extensions, modifications, and renewals thereof and any supplemental note or notes increasing such indebtedness, as well as the payments, observance, performance, and discharge of all other obligations, covenants, conditions, and warranties contained in the Mortgage or Deed of Trust made by Assignor, dated ~~November 10, 1980~~ recorded in the Real Property Records of Oak County, Illinois, on Nov 13 1980, as Document No. 867546457, and in any extensions, modifications, supplements, and other consolidations thereof, covering the Premises and securing the Note and supplemental notes, if any (collectively, the "Note" and "Deed of Trust").

In order to protect the security of the assignment, it is covenanted and agreed as follows:

1. Assignor's warranties concerning leases and rents. Assignor represents and warrants that

- a. It has good title to the Leases and rents hereby assigned and good right to assign them, and no other person, firm, or corporation has any right, title or interest therein;
- b. Assignor has duly and punctually performed all the terms, covenants, conditions, and warranties of the Leases that were to be kept, observed, and performed by it;
- c. The Identified Leases, if any, and all other existing Leases are valid and unmodified and in full force and effect, except as indicated herein;
- d. Assignor has not, except as noted in Schedule 2 hereof, previously sold, assigned, transferred, mortgaged, or pledged the rents from the Premises, whether they are due now or become due hereafter;
- e. Any of the rents due and issuing from the Premises or from any part thereof for any period subsequent to the date hereof has not been collected, and payment thereof has not otherwise been anticipated, waived, released, discounted, set off, or compromised;
- f. Assignor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued rents;
- g. The tenants under the Identified Leases, if any, and all other existing Leases are not in default of any of the terms thereof; and
- h. Any part of the Premises occupied other than by virtue of a written lease is done so under an exclusively oral agreement which contains no option to purchase the Premises, is for a term not exceeding one (1) year, does not permit a sublet or assignment of without Lessor's consent, and is at a rental and with a security deposit in amounts represented to Assignee in Assignor's application for the loan evidenced by the Note.

2. Assignor's covenants of performance. Assignor covenants and agrees to:

- a. Observe, perform and discharge, duly and punctually, all the obligations, terms, covenants, conditions, and warranties of the Note and Deed of Trust, the Identified Leases, and all existing and future Leases affecting the Premises that Assignor is to keep, observe, and perform, and give prompt notice to Assignee of any failure on the part of Assignor to observe, perform, and discharge same;
- b. Give prompt notice to Assignee of any notice, demand, or other document received by Assignor from any tenant or subtenant under the Leases specifying any default claimed to have been made by the Assignor under the Leases;
- c. Notify in writing each and every present or future tenant or occupant of the Premises or of any part thereof that any security deposit or other deposit heretofore delivered to Assignor has been retained by Assignor or assigned and delivered to Assignee, as the case may be;
- d. Enforce or secure in the name of Assignee, upon notice to Assignee, the performance of each and every obligation, term, covenant, condition, and agreement in the Leases to be performed by any tenant, and notify Assignee of the occurrence of any default under the Leases;
- e. Appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties, or liabilities of Assignor and any tenant thereunder, and upon request by Assignee, do so in the name and behalf of Assignee, but in all cases at the expense of Assignor;
- f. Pay all costs and expenses of Assignee, including attorneys' fees in a reasonable sum and court costs, in any action or proceeding in which Assignee may appear in connection herewith; and
- g. Neither create nor permit any lien, charge, or encumbrance upon its interests as lessor of the Leases, except for the lien of the Deed of Trust or as provided in the Deed of Trust.

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9. Appointment of attorney. Assignee hereby constitutes and appoints Assignee to be its true and lawful attorney, coupled with an interest of Assignor, so that in the name, place, and stead of Assignor, the Assignee can subordinate, at any time and from time to time, any Leases affecting the Premises or any part thereof, the Deed of Trust, the hereinbefore described Deed of Trust, any other deed encumbering the Premises, or any ground lease of the Premises, and request or require such subordination where such option or authority was reserved to Assignor under any such Leases, or in any case where Assignor otherwise would have the right, power, or privilege so to do. This appointment is to be irrevocable and continuing, and these rights, powers, and privileges shall be exclusive in Assignee, its successors, and assigns as long as any part of the indebtedness secured hereby shall remain unpaid. Assignor hereby warrants that it has not, at any time prior to the date hereof, exercised any right to subordinate any such Lease to the Deed of Trust or to any other deed of trust or ground lease, and further covenants not to exercise any such right.

10. Indemnification. Assignor hereby agrees to indemnify and hold Assignee harmless from any and all liability, loss, damage, or expense that Assignee may incur under, or by reason or in defense of, any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Leases, including, but not limited to, any claims by any tenants of credit for rental for any period under any Leases more than one (1) month in advance of the due date thereof paid to and received by Assignor but not delivered to Assignee. Should Assignee incur any such liability, loss, damage, or expense, the amount thereof, including reasonable attorneys' fees, with interest thereon at the rate charged from time to time under the Note shall be payable by Assignor immediately without demand, and shall be secured as a lien hereby and by said Deed of Trust.

11. Records. Until the indebtedness secured hereby shall have been paid in full, Assignor shall deliver to Assignee, immediately after Notice, executed copies of any and all renewals of existing leases and all future leases upon all or any part of the Premises, and will transfer and assign such Leases upon the same terms and conditions as herein contained. Assignor hereby covenants and agrees to make, execute, and deliver to Assignee upon demand and at any time any and all assignments and other records and instruments, including, but not limited to, rent rolls and books of account sufficient for the purpose, that Assignee may deem to be advisable for carrying out the purposes and intent of this Assignment.

12. No waiver. The failure of Assignee to avail itself of any of the terms, covenants, and conditions of this Assignment for any period of time or at any time shall not be construed or deemed to be a waiver of any such right, and nothing herein contained nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies under the Note and Deed of Trust or the laws of the state in which the said Premises are situated. The rights of Assignee to collect the said indebtedness, to enforce any other security therefor, or to enforce any other right or remedy hereunder, may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any other action taken hereunder or under the Deed of Trust and shall not be deemed an election of remedies.

13. Primary security. This Assignment of Leases and Rents is primary in nature to the obligation evidenced and secured by the Note, Deed of Trust, and any other document given to secure and collateralize the indebtedness. Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral. However, nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Deed of Trust, or exercising any other right under any other document collateralizing the Note.

14. Merger. The fact that the Leases or the leasehold estates created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Premises, the operation of the law, or any other event shall not merge any Leases or the leasehold estates created thereby with the fee estate in the Premises as long as any of the indebtedness secured hereby and by the Note and Deed of Trust shall remain unpaid, unless Assignee shall consent in writing to such merger.

15. Termination of assignment. Upon payment in full of all of the indebtedness secured by the Note and Deed of Trust and all sums payable hereunder, this Assignment shall be void and of no effect. No judgment or decree entered as to said indebtedness shall operate to abrogate or lessen the effect of this Assignment until the indebtedness has actually been paid. The affidavit, certificate, letter, or statement of any officer of Assignee showing that any part of said indebtedness has remained unpaid shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment. Any person, firm, or corporation may, and is hereby authorized to, rely on such affidavit, certificate, letter or statement. A demand by Assignee of any tenant for payment of rents by reason of any default claimed by Assignee shall be sufficient direction to said tenant to make future payments of rents to Assignee without the necessity for further consent by, or notice to, Assignor.

16. Notice. All notices, demands, or documents of any kind that Assignee may be required or may desire to serve upon Assignor hereunder shall be sufficiently served by delivering them personally to Assignor, by leaving a copy addressed to Assignor at the address appearing hereinabove, or by depositing a copy in the United States mail, postage prepaid, first class mail, addressed to Assignor at the above address.

17. Successors. The terms, covenants, conditions, and warranties contained herein and the powers granted hereby shall run with the land and shall inure to the benefit of, and bind, all parties hereto and their respective heirs, successors, and assigns, all tenants and their subtenants and assigns, and all subsequent owners of the Premises and subsequent holders of the Note and Deed of Trust.

18. Additional rights and remedies. In addition to, but not in lieu of, any other rights hereunder, Assignee shall have the right to institute suit and obtain a protective or mandatory injunction against Assignor to prevent a breach or default, or to enforce the observance of the agreements, covenants, terms and conditions contained herein, as well as the right to ordinary and punitive damages occasioned by any breach or default by Assignor.

19. Location of performance. Assignor expressly agrees that this Assignment is performable in Cook County, Illinois, waives the right to be sued elsewhere, and agrees and consents to the jurisdiction of any court of competent jurisdiction located in Cook County, Illinois.

20. Severability. If any provisions of this Assignment or the application thereof to any entity, person, or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of its provisions to other entities, persons, or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

21. Third party beneficiaries. It is expressly agreed by Assignor that this Assignment shall not be construed or deemed made for the benefit of any third party or parties.

22. Entire agreement. This document contains the entire agreement concerning the assignment of rents and leases between the parties hereto, expressly superseding any such provision contained in the Deed of Trust. No variations, modifications, or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by, or on behalf of, such party.

23. Construction. Whenever used herein and the context requires it, the singular number shall include the plural, the plural the singular, and any gender shall include all genders. All obligations of each Assignor hereunder shall be joint and several.

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3. Prior approval for actions affecting leases. Assignor further covenants and agrees not to, without the prior written consent of the Assignee:

- a. Receive or collect any rents, in cash or by promissory note, from any present or future tenant of the Premises or any part thereof for a period of more than (1) one month in advance of the date on which such payment is due, or pledge, transfer, mortgage, or otherwise encumber or assign future payments of rents;
- b. Waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any Lease of the Premises of and from any obligations, covenants, conditions, and agreements to be kept, observed, and performed by the tenant, including the obligation to pay the rents thereunder in the manner and at the place and time specified therein;
- c. Cancel, terminate, or consent to any surrender of any of the Leases, permit any cancellation, termination, or surrender, commence an action of ejectment or any summary proceedings for dispossession of the tenant under any Lease any part of the Premises, or renew or extend the term of any Lease of the Premises unless either: (i) an option thereon was originally reserved by the tenant in the Lease for a fixed and definite rental, or (ii) said Lease provides: (a) rental which at least equals the rental for the demised Premises shown in its current Lease as represented to Assignee in Assignor's application for the loan evidenced by the Note; (b) a term not exceeding one (1) year; (c) no option to purchase the Premises or any part thereof; and (d) no right to sublet or assign without Assignor's consent; or
- e. Relocate or expand the floor space of any tenant within the Premises, or consent to any modification of the express purposes for which the Premises have been leased, any subletting of the Premises or any part thereof, any assignment of the Leases by any tenant thereunder, or any assignment or further subletting of any sublease.

4. Rejection of leases. In the event any leasee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Act or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that if any of the Leases is so rejected, no settlement for damages shall be made without the prior written consent of the Assignee, and any check in payment of damages for rejection of such Lease will be made payable both to the Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Agreement Assignee may elect.

5. Default or deemed default under Deed of Trust. In the event any representation or warranty of Assignor made herein shall be found to be untrue, or Assignor shall default in the observance or performance of any obligation, term, covenant, condition, or warranty contained in the Note and Deed of Trust hereby entitling Assignee to declare all sums secured thereby and hereby immediately due and payable and to exercise a lien and all of the rights and remedies provided thereunder and herein, as well as by law.

6. License to collect rents. As long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant, condition, or warranty contained herein, in the Note and Deed of Trust, or in the Leases, Assignor shall have the right under a license granted hereby, but limited as provided in the following sentence, to collect, but not prior to accrual, all of the rents arising from or out of said Leases or any renewals, extensions, and attachments thereof, or from or out of the Premises or any part thereof. Assignor shall receive such rents and shall hold them as a trust fund to be applied as required by the Assignee, and Assignor hereby covenants to so apply them before using any part of the same for any other purposes, firstly, to the payment of taxes and assessments upon said Premises before penalty or interest is due thereon, secondly, to the cost of insurance, maintenance, and repairs required by the terms of said Deed of Trust, thirdly, to the satisfaction of all obligations specifically set forth in the Leases; and fourthly, to the payment of interest and principal becoming due on the Note and Deed of Trust.

7. Transfer of license. Upon the conveyance by Assignor and its successors and assigns of the fee title of the Premises, all right, title, interest, and powers granted under the license set forth herein shall automatically pass to and may be exercised by each subsequent owner. The provisions of this paragraph shall not, however, be deemed in any event to modify Assignor's right to accelerate the sums due under the Note in accordance with the terms of the Note and the Deed of Trust.

8. Enforcement and termination of license. Upon or at any time a default in the payment of any indebtedness secured hereby or in the observance or performance of any obligation, term, covenant, condition, or warranty contained herein, in the Note and Deed of Trust, or in the Leases, Assignee, at its option and without notice, shall have the complete right, power and authority to exercise and enforce any or all of the following rights and remedies at any time:

- a. To terminate the license granted to Assignor to collect the rents without taking possession, and to demand, collect, receive, sue for, attack, and levy against the rents in Assignor's own name; to give proper receipts, releases, and acquittances therefore; and after deducting all necessary and proper costs and expenses of operation and collection as determined by Assignee, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness secured hereby and in such order as Assignee may determine.
- b. To declare all sums secured hereby immediately due and payable and, at its option, exercise all or any of the rights and remedies contained in the Note and Deed of Trust;
- c. Without regard to the adequacy of the security or the solvency of Assignor, with or without any action or proceeding through any person, by agent, by the trustee under any Deed of Trust secured hereby, or by a receiver to be appointed by a court, and without regard to Assignor's possession, to enter upon, take possession of, manage, and operate the Premises or any part thereof, make, modify, enforce, cancel, or accept surrender of any Leases now or hereafter in effect on said Premises or any part thereof; remove and evict any lessee; increase or decrease rent; decorate, clean, repair, as fully and to the same extent as Assignor could do if in possession; and apply the rents so collected in such order as Assignee shall deem proper to the operation and management of said Premises, including the payment of or reasonable management, brokerage, and attorneys' fees and the indebtedness under the Note and Deed of Trust; and payment for replacements to a reserve fund that shall not bear interest, all without any responsibility to account to Assignor; and
- d. Require Assignor to transfer all security deposits to Assignee, together with all records evidencing these deposits. Provided, however, that the acceptance by Assignee of this Assignment, with all of the rights, powers, privileges, and authority so created, shall not, prior to entry upon and taking possession of said Premises by Assignee, be deemed or construed to constitute Assignee a "Mortgagee in Possession", nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Premises, to take any action hereunder, to expend any money, incur any expenses, or perform or discharge any obligation, duty, or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee, sublessee or assignee thereunder and not assigned and delivered to Assignee. The Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm, or corporation in or about the Premises.

Provided further, that the collection of the rents and their application as aforesaid and/or the entry upon and taking possession of the Premises shall not cure or waive any default, modify, or affect any notice of default required under the Note and Deed of Trust, or invalidate any act done pursuant to such notice. The enforcement of any right or remedy by Assignee, once exercised, shall continue until Assignee shall have collected and applied enough to cure, or remedy or remedy the original default. Although the original default be cured and the exercise of any right or remedy be discontinued, the same or any other right or remedy hereunder shall not be exhausted and may be reassessed at any time and from time to time following any subsequent default. The rights and powers conferred on Assignee hereunder are cumulative and not limited by any other rights and powers conferred on Assignee.

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